then applicable and copies of the original which are sworn to as true are admissible. *Hodnett v. Gault* (1901) 64 App. Div. (N. Y.) 163; *Hancock v. Hintrager* (1882) 60 Ia. 374. Thus a ledger like any other copy of original entries becomes competent evidence when the loss or innocent destruction of the book of original entry is established and a general balance may be introduced without introducing the separate items. *Rigby v. Logan* (1895) 45 S. C. 651. If the absence of the original is unaccounted for, or no explanation is given of its destruction, the copy is inadmissible. *Rouss v. McDowell* (1895) 88 Hun, 532; *Palmer v. Goldsmith* (1884) 15 Ill. App. 544. In admitting a copy much rests in the discretion of the trial judge. *Stephan v. Metzger* (1902) 95 Mo. App. 609. The principal case is in accord with the prevailing rule and in harmony with modern business methods.

S. J. T.

MASTER AND SERVANT—NEGLIGENCE—LIABILITY OF FATHER FOR SON'S NEGLIGENCE IN OPERATING PLEASURE CAR.—VAN BLARICOM V. DODGSON (1917) 8 DAILY RECORD (N. Y.) 56.—The defendant kept a motor car for pleasure purposes and convenience of his family. His adult son while operating the car with his father's permission, for his own pleasure and convenience, negligently drove over the plaintiff's intestate and killed him. *Held,* that the defendant was not liable for the negligence of his son as there was no agency established.

For a discussion of the principles involved in this case, see (1917) 26 YALE LAW JOURNAL, 327.

S. J. T.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—INJURY ARISING OUT OF EMPLOYMENT.—WALTHER V. AMERICAN PAPER CO. (1916) 99 ATL. (N. J.) 263.—A night watchman in a mill, while making his rounds, was struck over the head and killed by an employee of the same company who had entered the mill and hid himself without any intent to rob the office of the mill or to do any other mischief or crime except to rob the deceased. *Held,* that the deceased was not killed from an accident arising out of his employment under Workmen's Compensation Act (P. L. 1911, p. 134). Minturn and Kalisch, JJ., *dissenting.*

The language of the New Jersey act of 1911 is identical with the language of the English act of 1906 in that to warrant a recovery an employee must be injured by "accident arising out of and in the course of his employment." *Bryant v. Fissell* (1913) 84 N. J. L. 72. The terms "out of" and "in the course of" are not synonymous. *State ex rel. Duluth Brewing, etc., Co. v. District Ct.* (1915) 129 Minn. 176. If either of these elements is missing, there can be no recovery. *McNicol's Case* (1913) 215 Mass. 497. It has been said that under the New Jersey act an accident which is the result of a risk reasonably incident to the employment is an accident arising out of the employment. *Hulley v. Moosbrugger* (1915) 88 N. J. L. 161. But it is not necessary that it should be one reasonably to be anticipated as an incident to the employment. *Sponatski's Case* (1915) 220 Mass. 526. Ordinarily, assault by third persons cannot be considered as incidental to the employment, but

where the assault is one which might be reasonably anticipated because of the general character of the work, or of the particular duties imposed upon the workmen, injuries resulting therefrom may be found to arise out of and in the course of the employment. *Reithel's Case* (1915) 222 Mass. 163 (where the superintendent of a mill was killed while ejecting a trespasser); *Weekes v. Stead* (1914) 83 L. J. (K. B.) 1542 (where a superintendent was assaulted and killed by a man refused work); *Trim Joint Dist. School v. Kelly* (1914) 1915A Ann. Cas. (Eng.) 104 (where a school master was assaulted and killed by pupils); *Macfarlane v. Shaw* (1915) 52 Sc. L. Rep. 236 (where an iron-moulder was assaulted by a stranger); *Thorn v. Humm* (1915) 112 L. T. 88 (where a taxicab driver driving an officer to a fort late at night was shot by a sentry). In view of these cases it seems that the duties of and circumstances surrounding a night watchman might make such an accident as that in the principal case the result of a risk reasonably incident to the employment.

E. J. M.

STATUTES—"TRIAL MARRIAGE" IN NEW YORK.—MCCANN V. MCCANN (1917) 56 N. Y. L. J. 1849.—The plaintiff sued for the annulment of a marriage on the ground that she was only seventeen years of age when she married the defendant and had left him before reaching the age of eighteen, not having cohabited with him since that time. There was born of the marriage one child which is still living. *Held*, that under the New York Code of Civil Procedure the plaintiff was entitled to an annulment of the marriage.

"Trial marriages" in New York are not only permitted but encouraged under the code. Sec. 1743 provides: "An action may also be maintained to procure a judgment, declaring a marriage contract void and annulling the marriage for either of the following causes existing at the time of the marriage: (1) That one or both of the parties had not attained the age of legal consent." Sec. 15 of the Domestic Relations Law provides that where the man is under twenty-one years of age and the woman under eighteen, written consent of the parents is necessary before the issuance of a marriage license. By one section a marriage is absolutely void from the time its nullity is declared by a court of competent jurisdiction, if either party thereto is under the age of legal consent. *Kruger v. Kruger* (1910) 137 App. Div. (N. Y.) 289. By another section it is permissible to issue marriage licenses to such persons if their parents consent. This incongruity should be corrected by the legislature. That it is in fact "trial marriage" is shown by the number of cases in which annulment has been granted, though the marriage was with the consent of the parents and there was cohabitation. *Conte v. Conte* (1903) 82 App. Div. (N. Y.) 335; *Earl v. Earl* (1904) 96 App. Div. (N. Y.) 639; *Wander v. Wander* (1906) 111 App. Div. (N. Y.) 189; *Mundell v. Coster* (1913) 80 Misc. (N. Y.) 337. The principal case presents a practical state of affairs in that there is a child of the "trial marriage." *Quaere*, what is the status of the child, and who is liable for its support?

E. J. M.